



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

JUN 12 2009

Reply To: ECL

Pam Kromholtz
NAVFAC NW
1101 Tautog Circle, Suite 203
Silverdale, WA 98315

RE: Stipulated Penalties for Violations of the CERCLA Section 120 Federal Facility Agreement for Jackson Park Housing Complex

Dear Ms. Kromholtz:

This letter notifies the Department of Navy, Naval Facilities Engineering Command Northwest (NAVFAC NW) of penalties being assessed by the U.S. Environmental Protection Agency (EPA) for violations of the Jackson Park Federal Facilities Agreement (FFA). The FFA authorizes EPA to assess stipulated penalties if the Navy fails to submit a Primary Document to EPA timely and "in accordance with the requirements of [the FFA]." FFA Paragraph 11.1. By this letter, EPA assesses stipulated penalties against the Navy for the Navy's failure to submit a Primary Document in accordance with the requirements of the Jackson Park FFA. This Primary Document is the draft final Remedial Investigation/Feasibility Study (RI/FS) report (Oct. 20, 2008) for Jackson Park Operable Unit 3T – JPHC.

As discussed in further detail in the Written Statement of Dispute accompanying this letter, the draft final RI/FS fails to present the remedial alternatives and analysis required by the FFA, CERCLA, the NCP, and applicable EPA guidance, as follows:

(1) the draft final RI/FS does not include a remedial alternative that meets the requirement for an alternative in which treatment is a principal element. [NCP at 40 CFR § 300.430(e)(3)(i)];

(2) the draft final RI/FS does not include a remedial alternative that provides protection through engineering controls, and as necessary, institutional controls [NCP at 40 CFR § 300.430(e)(3)(ii)]; and

(3) the draft final RI/FS does not reflect "the product of consensus to the maximum extent possible," as required by FFA Paragraph 5.7.4.

Under Part XI of the FFA, a stipulated penalty may be assessed in an amount up to \$5,000 for the first week (or part thereof), and up to \$10,000 for each additional week

(or part thereof) for each failure to comply. For purposes of calculating the present penalty, EPA considers the Navy's violations to begin on May 13, 2009, with the letter from Pam Kromholtz providing the Navy's final refusal to incorporate the necessary remedial alternatives into the draft final RI/FS. Beginning on May 13, 2009, EPA is assessing a penalty of \$5,000 (May 13-May 20, 2009) plus \$10,000 for each week thereafter (May 21, 2009 – present).

Consistent with the FFA, the Navy shall not be liable for stipulated penalties if the failure is determined through the dispute resolution process not to have occurred. FFA Paragraph 11.2. However, the amount of the penalty assessed by EPA is not subject to dispute resolution. The violations described above are ongoing as of the date of this letter. The stipulated penalties will continue to accrue, subject to FFA Paragraph 12.7, until the violations are corrected.

If you have any questions concerning this matter, please contact Monica Kirk, Esq., at 503.326.3269.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela Chuy". The signature is fluid and cursive, with the first name "Angela" written in a larger, more prominent script than the last name "Chuy".

acting for Deb Yamamoto, Unit Manager
Environmental Cleanup Office